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March 25, 2016

VIA CERTIFIED MAIL

Santa Ana Batch Plant
Attn: Managing Agent
310 N. Townsend Street
Santa Ana, California 92703

Robertson's Ready Mix, Ltd., a California Limited Partnership
200 S. Main Street
Suite 200
Corona, California 92882-2212

Mitsubishi Cement Corporation
6830 Van Buren Boulevard
Riverside, California 92509

Mitsubishi Materials Corporation U.S.A.
11250 Slater Avenue
Fountain Valley, California 92708

Mervyn Encarnacion
Registered Agent for Service of Process for
Robertson's Ready Mix, Ltd., a California Limited Partnership
200 S. Main Street, Suite 200
Corona, California 92882-2212

C T CORPORATION SYSTEM
Registered Agent for Service of Process for
Mitsubishi Cement Corporation
818 West Seventh Street
Suite 930
Los Angeles, California 90017

Theodore J. Roper
c/o Freeman Freeman and Smiley, LLP
Registered Agent for Service of Process for
Mitsubishi Materials Corporation
1888 Century Park East
Suite 1900
Los Angeles, California 90067

Re: Notice of Violation and Intent to File Suit Under the Clean Water Act

To Whom It May Concern:

I am writing on behalf of Orange County Coastkeeper ("Coastkeeper") regarding violations of the Clean Water Act[1] and California's Industrial Storm Water Permit[2] ("Storm

[1] Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 *et seq.*
[2] National Pollution Discharge Elimination System ("NPDES") General Permit No. CAS000001, Water Quality Order No. 92-12-DWQ, Order No. 97-03-DWQ, as amended by Order No. 2015-0057-DWQ.

Water Permit") occurring at the industrial facility with its main address at: 310 N. Townsend Street, Santa Ana, California 92703 ("Facility"). The purpose of this letter is to put Santa Ana Batch Plant, Robertson's Ready Mix, Ltd., a California Limited Partnership, Mitsubishi Materials U.S.A. Corporation, and Mitsubishi Cement Corporation (collectively "Robertson's"), as the owners and/or operators of the Facility, on notice of the violations of the Storm Water Permit occurring at the Facility, including, but not limited to, discharges of polluted storm water from the Facility into local surface waters. Violations of the Storm Water Permit are violations of the Clean Water Act. As explained below, Robertson's is liable for violations of the Storm Water Permit and the Clean Water Act.

Section 505(b) of the Clean Water Act, 33 U.S.C. § 1365(b), requires that sixty (60) days prior to the initiation of a civil action under Section 505(a) of the Clean Water Act, 33 U.S.C. § 1365(a), a citizen must give notice of his/her intention to file suit. The Clean Water Act requires that notice must be given to the alleged violator, the Administrator of the United States Environmental Protection Agency ("EPA"), the Regional Administrator of the EPA, the chief administrative officer of the water pollution control agency for the State in which the violations occur, and, if the alleged violator is a corporation, the registered agent of the corporation. *See* 40 C.F.R. § 135.2(a)(1).

This letter is being sent to you as the responsible owner and operator of the Facility, or as the registered agent for this entity. This notice letter ("Notice Letter") is issued pursuant to 33 U.S.C. §§ 1365(a) and (b) of the Clean Water Act to inform Robertson's that Coastkeeper intends to file a federal enforcement action against Robertson's for violations of the Storm Water Permit and the Clean Water Act sixty (60) days from the date of this Notice Letter.

I. BACKGROUND

A. Orange County Coastkeeper

Orange County Coastkeeper is a non-profit public benefit corporation organized under the laws of the State of California with its office at 3151 Airway Avenue, Suite F-110, Costa Mesa, California 92626. Coastkeeper has over 2,000 members who live and/or recreate in and around the Newport Bay watershed. Coastkeeper is dedicated to the preservation, protection, and defense of the environment, wildlife, and natural resources of the Newport Bay watershed. To further these goals, Coastkeeper actively seeks federal and state agency implementation of the Clean Water Act and other environmental regulations, and, where necessary, directly initiates enforcement actions on behalf of itself and its members.

Members of Coastkeeper use and enjoy the waters that Robertson's discharges into, including Newport Bay and its tributaries. Members of Coastkeeper use and enjoy Newport Bay and its tributaries to swim, wade, picnic, hike, view wildlife, and engage in scientific study including monitoring activities. The discharge of pollutants and emissions of fugitive dust from the Facility impairs each of these uses. Further, discharges of polluted storm water and fugitive

dust emissions from the Facility are ongoing and continuous. Thus, the interests of Coastkeeper's members have been, are being, and will continue to be adversely affected by Robertson's failure to comply with the Clean Water Act and the Storm Water Permit.

B. The Owners and/or Operators of the Facility

Information available to Coastkeeper indicates that Robertson's Ready Mix, Ltd., is an owner and/or operator of the Facility. Robertson's Ready Mix, Ltd. is an active California limited partnership and its registered agent is: Mervyn Encarnacion, 200 S. Main Street, Suite 200, Corona, California 92882. Pursuant to California Corporations Code section 15904.04, Robertson's Ready Mix, Ltd.'s general partners are jointly and severally liable for the Clean Water Act violations described herein, and Coastkeeper will include Robertson's Ready Mix, Ltd.'s general partners when that information becomes available. Further, to the extent Robertson's Ready Mix, Ltd.'s limited partners own and/or operate the Facility together with Robertson's Ready Mix, Ltd., Coastkeeper will include those limited partners when that information becomes available.

Information available to Coastkeeper indicates that Mitsubishi Cement Corporation is an owner and/or operator of the Facility. Mitsubishi Cement Corporation is an active California corporation and its registered agent is: C T CORPORATION SYSTEM, 818 West Seventh Street, Suite 930, Los Angeles, California 90017.

Information available to Coastkeeper indicates that Mitsubishi Materials U.S.A. Corporation is the parent company of Robertson's and is an owner and/or operator of the Facility. Mitsubishi Materials Corporation is an active California corporation and its registered agent is: Theodore J. Roper, c/o Freeman Freeman and Smiley, LLP, 1888 Century Park East, Suite 1900, Los Angeles, California 90067.

Coastkeeper refers to Santa Ana Batch Plant, Robertson's Ready Mix, Ltd. a California limited partnership, Mitsubishi Cement Corporation, and Mitsubishi Materials Corporation together as the "Facility Owners and/or Operators." The Facility Owners and/or Operators have violated and continue to violate the procedural and substantive terms of the Storm Water Permit including, but not limited to, the illegal discharge of pollutants from the Facility into local surface waters. As explained herein, the Facility Owners and/or Operators are liable for violations of the Storm Water Permit and the Clean Water Act.

C. The Facility's Storm Water Permit Coverage

Facilities that discharge storm water associated with specified industrial activities are required to apply for coverage under the Storm Water Permit by submitting a Notice of Intent ("NOI") to the State Water Resources Control Board ("State Board") to obtain Storm Water Permit coverage. *See* Storm Water Permit, Finding ¶¶ 12, 17.

Robertson's obtained Storm Water Permit coverage on September 16, 1994. The NOI submitted in June 1994 ("1994 NOI") identifies the owner/operator of the Facility as "Robertsons Ready Mix" and the Facility name and location as "Santa Ana Batch Plant, 312 Townsend Ave, Santa Ana 92703." The 1994 NOI lists the Facility as 1.03 acres in size and 90% impervious. On June 16, 1997, Robertson's submitted an NOI to continue the Facility's coverage under the Permit ("1997 NOI"). The 1997 NOI identifies the owner/operator of the Facility as "Robertsons Ready Mix" and the Facility name and location as "Santa Ana Batch Plant, 310 N. Townsend Ave, Santa Ana 92703."

On September 29, 2015, Robertson's submitted an NOI to continue the Facility's coverage under the Permit ("2015 NOI"). The 2015 NOI identifies the owner/operator of the Facility as "Robertsons Ready Mix" and the Facility name and location as "Robertsons Ready Mix Santa Ana, 310 N Townsend St, Santa Ana, CA 92703." The 2015 NOI lists the Facility as "1.53 acres," the industrial area exposed to storm water is listed as "59100 Sq.Feet" (approximately 1.36 acres), and the percentage of imperviousness is not listed. The 2015 NOI list the Waste Discharge Identification ("WDID") number for the Facility as 8 30I011158.

The 1994, 1997, and 2015 NOIs list the Standard Industrial Classification ("SIC") code for the Facility as 3273 (Ready-Mixed Concrete). SIC code 3273 facilities must obtain Storm Water Permit coverage for the entire facility. *See* Storm Water Permit, Attachment A, ¶ 2. The 1994 NOI also identifies the Facility as "Regulated by Storm water Effluent Guidelines (40 CFR Subchapter N), and lists "admixtures – cement" as types of materials handled and/or stored outdoors at the Facility. Further, information available to Coastkeeper, including the Facility's Storm Water Pollution Prevention Plan ("SWPPP"), indicates there is vehicle and equipment maintenance and storage at the Facility, and indicates that SIC code 4214 (local trucking with storage) also applies to the Facility.

The Facility SWPPP[3] states that the Facility constitutes two "Drainage Areas:" Drainage Area 1 consisting of 1.03 acres, and Drainage Area 2 consisting of 1.75 acres (for a total of 2.78 acres). Given that the 1994, 1997, and 2015 NOIs do not seek coverage for the total acreage of the Facility, Coastkeeper puts Robertson's on notice that Robertson's has failed to obtain Storm Water Permit coverage for the entire Facility, as required by the Storm Water Permit and explained in detail below.

D. Storm Water Pollution and the Waters Receiving Robertson's Discharges

With every significant rainfall event, millions of gallons of polluted storm water originating from industrial operations such as the Facility pour into storm drains and local

[3] The Facility SWPPP publicly available via the SMARTS database is labeled "April 2015" and is signed by the Facility's "legally responsible person" on September 30, 2015. Coastkeeper also obtained the April 2015 SWPPP via a Public Records Act request. Coastkeeper understands that the April 2015 SWPPP is the current SWPPP for the Facility.

waterways. The consensus among agencies and water quality specialists is that storm water pollution accounts for more than half of the total pollution entering surface waters each year. Such discharges of pollutants from industrial facilities contribute to the impairment of downstream waters and aquatic dependent wildlife. These contaminated discharges can and must be controlled for the ecosystem to regain its health.

Based on EPA's Industrial Stormwater Fact Sheet for Glass, Clay, Cement, Concrete, and Gypsum Product Manufacturing Facilities, polluted discharges from concrete mixing facilities such as the Facility contain pH affecting substances; metals, such as iron and aluminum; toxic metals, such as lead, zinc, cadmium, chromium, and arsenic; chemical oxygen demand ("COD"); biochemical oxygen demand ("BOD"); total suspended solids ("TSS"); benzene; gasoline and diesel fuels; fuel additives; coolants; and oil and grease ("O&G"). Many of these pollutants are on the list of chemicals published by the State of California as known to cause cancer, birth defects, and/or developmental or reproductive harm. Discharges of polluted storm water to Newport Bay and its tributaries pose carcinogenic and reproductive toxicity threats to the public and adversely affect the aquatic environment.

The Facility discharges into municipal storm drain system which then discharges to the Santa Ana Delhi Channel—a tributary of Upper Newport Bay, an ecologically sensitive area, and Lower Newport Bay ("Receiving Waters"),[4] which are ecologically sensitive areas. Although pollution and habitat destruction have drastically diminished once-abundant and varied fisheries, these waters are still essential habitat for dozens of fish and bird species as well as macro-invertebrate and invertebrate species. Storm water and non-storm water contaminated with sediment, heavy metals, and other pollutants harm the special aesthetic and recreational significance that the Receiving Waters have for people in the surrounding communities. The public's use of local waterways exposes many people to toxic metals and other contaminants in storm water discharges. Non-contact recreational and aesthetic opportunities, such as wildlife observation, are also impaired by polluted discharges to the Receiving Waters.

The California Regional Water Quality Control Board, Santa Ana Region Regional Board ("Regional Board") issued the *Santa Ana River Basin Water Quality Control Plan* ("Basin Plan"). The Basin Plan identifies the "Beneficial Uses" of water bodies in the region. The Beneficial Uses for the Receiving Waters downstream of the Facility include: Water Contact Recreation; Non-contact Water Recreation; Commercial and Sportfishing; Preservation of Biological Habitats of Special Significance; Spawning, Reproduction and Development; Marine Habitat; Shellfish Harvesting; Estuarine Habitat; Warm Freshwater Habitat; Wildlife Habitat; and Rare, Threatened or Endangered Species. *See* Basin Plan at Table 3-1. According to the 2010 303(d) List of Impaired Water Bodies, the Santa Ana Delhi Channel is impaired for indicator bacteria, Upper Newport Bay is impaired for chlordane, copper, DDT, indicator bacteria, metals,

[4] The channel starts in the midsection of the City of Santa Ana and empties into the Upper Newport Bay State Ecological Reserve in the City of Newport Beach.

nutrients, PCBs, pesticides, sediment toxicity, and sedimentation/siltation, and Lower Newport Bay is impaired for chlordane, copper, DDT, indicator bacteria, nutrients, PCBs, pesticides, and sediment toxicity.[5] Polluted discharges from industrial sites, such as the Facility, contribute to the degradation of these already impaired surface waters and aquatic-dependent wildlife that depends on these waters.

II. THE FACILITY AND ASSOCIATED DISCHARGES OF POLLUTANTS

A. The Facility Site Description and Industrial Activities

The Facility is an active concrete batch plant consisting of two (2) sections: 1.03 acres portion and 1.75 acres portion. Raw materials, including aggregate (rock, sand, and gravel), cement,[6] fly ash, and admixtures are delivered to the Facility, and are mixed with water to create concrete. These materials, water, and (if applicable) admixtures are added to concrete haul trucks that mix the ingredients together to produce concrete and haul the concrete off site. As part of the concrete production process, unused concrete is returned to the Facility, stored onsite, and recycled. The concrete production process also includes onsite vehicle and mobile equipment operation, parking, fueling, and maintenance.

The SWPPP states that industrial activities do not occur on the 1.75 acres portion of the Facility. However, information available to Coastkeeper, including the Facility SWPPP and Coastkeeper's visual observations, indicates that material handling and storage activities associated with the Facility Owners' and/or Operators' concrete manufacturing process, among other industrial activities, occur on the 1.75 acres portion of the Facility.

Accordingly, the Facility's industrial activities include, but are not limited to: concrete mixing; transport of raw materials; unloading of raw materials; outdoor storage of raw materials, including sand, gravel, rock, chemical admixtures, fly ash, cement, and recycled concrete; fueling, repairing, cleaning, and maintaining vehicles and equipment; storage of fuels and hazardous materials, such as diesel fuel, lubricating fluids, new vehicle fluids, and hazardous waste vehicle fluids; and vehicle and equipment storage.

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[5] 2010 Integrated Report – All Assessed Waters, *available at* http://www.waterboards.ca.gov/water_issues/programs/tmdl/2010state_ir_reports/category5_report.shtml (last accessed on March 22, 2016).

[6] Based on Coastkeeper's review of the Facility SWPPP, cement is stored in "cement storage silos" in the concrete batch plant area of the Facility, and that cement is received in this area. To the extent cement is stored outdoors, storm water discharges from the Facility may be subject to additional effluent limitations set out at 40 C.F.R. § 411.30. Coastkeeper will add additional information and/or violations relevant to the Facility Owners and/or Operators' storage and handling of cement as that information becomes available to Coastkeeper.

B. Pollutants Associated with Robertson's Industrial Activities

Information available to Coastkeeper indicates that pollutants associated with operations at the Facility include, but are not limited to: pH-affecting substances[7]; metals, such as iron and aluminum; toxic metals, such as lead, zinc, cadmium, chromium, copper, and arsenic; COD; BOD; TSS[8]; benzene; gasoline and diesel fuels; fuel additives; coolants; trash; and O&G.

Information available to Coastkeeper indicates Robertson's has not properly developed and/or implemented the required best management practices ("BMPs") to address pollutant sources and contaminated discharges. BMPs are necessary at the Facility to prevent the exposure of pollutants to precipitation and the subsequent discharge of polluted storm water from the Facility during rain events. Consequently, during rain events, storm water carries pollutants from the Facility's stockpile or material storage area(s), truck parking area(s), fueling and maintenance area(s), add-mix area(s), batch plant area(s), washing area(s), and other areas into the storm sewer system, which flows into the Receiving Waters, in violation of the Storm Water Permit.

Information available to Coastkeeper also indicates that concrete, particulates, and fugitive dust of sand, gravel, and cement have been and continue to be tracked throughout the Facility. These pollutants accumulate at the sand and gravel storage areas and near the silos, the loading and unloading areas, and the driveways leading onto N. Townsend Street and W. 4th Street. As a result, trucks and vehicles leaving the Facility via the driveways are pollutant sources tracking sediment, dirt, O&G, metal particles, and other pollutants off-site.

Information available to Coastkeeper indicates that raw materials are stored outside and weighing and mixing activities occur outside without adequate cover or containment resulting in discharges of polluted storm water and fugitive dust emissions. Additionally, metal parts and hazardous materials associated with maintenance, fueling, and washing of the concrete trucks

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[7] Storm water discharged with high pH can damage the gills and skin of aquatic organisms and cause death at levels above 10 standard units. The pH scale is logarithmic and the solubility of a substance varies as a function of the pH of a solution. A one whole unit change in SU represents a tenfold increase or decrease in ion concentration. If the pH of water is too high or too low, the aquatic organisms living within it will become stressed or die.

[8] High concentrations of TSS degrade optical water quality by reducing water clarity and decreasing light available to support photosynthesis. TSS has been shown to alter predator prey relationships (for example, turbid water may make it difficult for fish to hunt prey). Deposited solids alter fish habitat, aquatic plants, and benthic organisms. TSS can also be harmful to aquatic life because numerous pollutants, including metals and polycyclic aromatic hydrocarbons, are absorbed onto TSS. Thus, higher concentrations of TSS results in higher concentrations of toxins associated with those sediments. Inorganic sediments, including settleable matter and suspended solids, have been shown to negatively impact species richness, diversity, and total biomass of filter feeding aquatic organisms on bottom surfaces.

occur outside without secondary containment or other measures to prevent polluted storm water and prohibited non-storm water discharges from discharging from the Facility. These activities are all significant pollutant sources at the Facility.

Robertson's failure to develop and/or implement required BMPs also results in prohibited discharges of non-storm water in violation of the Storm Water Permit and the Clean Water Act. Information available to Coastkeeper indicates that Robertson's discharges process waters from equipment washing and other activities as part of its industrial operations.

C. Facility Storm Water Flows and Discharge Locations

In the Facility's SWPPP, the Facility Owners and/or Operators identify two (2) discharge points at the Facility: Outfall 1 ("OF1") and Outfall 2 ("OF2"). OF1 is located at the south driveway of the Facility leading to N. Townsend Street. The Facility's SWPPP states that storm water that falls in the area draining to OF1 flows to one of several collection points, including a 3 pit-reclaimer, a holding basin, and a detention basin, and that ultimately runoff will flow to the detention basin before discharging from OF1. OF2 is located at the north driveway of the Facility at the corner of N. Townsend Street and W. 4th Street. The Facility's SWPPP states that storm water that falls in the area draining to OF2 sheet flows towards the Facility exit and discharges from the north driveway. The SWPPP does not indicate that storm water from the area draining from OF2 is prevented from mixing with storm water that discharges from OF1.

However, information available to Coastkeeper including an inspection report, indicates at least one (1) other storm water discharge point exists at the Facility; an outfall in close proximity to the truck wash out area where wash out water (a mixture of water and acid) could flow through the north chain link fence. All discharge points lead to the municipal separate storm sewer system, which flows to the Receiving Waters.

The Facility Owner and/or Operators also report that there is a detention basin on the Facility that collects storm water, but no sizing information is provided. Coastkeeper's observations and storm water samples collected by the Facility Owners and/or Operators demonstrate that storm water discharges from the Facility notwithstanding the detention basin. Based on information available to Coastkeeper, the detention basin does not contain all storm water at the Facility and that storm water polluted by the industrial activities at the Facility discharges to the Receiving Waters from the Facility discharge locations.[9]

[9] To the extent Robertson's intends to retain storm water associated with industrial activities on the Facility in an effort to terminate its current Permit coverage, Coastkeeper puts Robertson's on notice that it has not met the requirements of Section XX.C. of the Storm Water Permit, and that any discharges from the Facility not in compliance with the Storm Water Permit are violations of Sections 301(a) and 402(p) of the Clean Water Act.

III. VIOLATIONS OF THE CLEAN WATER ACT AND THE STORM WATER PERMIT

In California, any person who discharges storm water associated with industrial activity must comply with the terms of the Storm Water Permit in order to lawfully discharge pollutants. *See* 33 U.S.C. §§ 1311(a), 1342; 40 C.F.R. § 122.26(c)(1); *see also* Storm Water Permit, Fact Sheet at VII.

Between 1997 and June 30, 2015, the Storm Water Permit in effect was Order No. 97-03-DWQ, which Coastkeeper refers to as the "1997 Permit." On July 1, 2015, pursuant to Order No. 2015-0057-DWQ the Storm Water Permit was reissued. For purposes of this Notice Letter, Coastkeeper refers to the reissued permit as the "2015 Permit." The 2015 Permit superseded the 1997 Permit, except for enforcement purposes, and its terms are as stringent, or more stringent, than the terms of the 1997 Permit. *See* 2015 Permit, Findings, ¶ 6. Accordingly, Robertson's is liable for violations of the 1997 Permit and ongoing violations of the 2015 Permit, and civil penalties and injunctive relief are available remedies. *See Illinois v. Outboard Marine, Inc.*, 680 F.2d 473, 480-81 (7th Cir. 1982) (relief granted for violations of an expired permit); *Sierra Club v. Aluminum Co. of Am.*, 585 F. Supp. 842, 853-54 (N.D.N.Y. 1984) (holding that the Clean Water Act's legislative intent and public policy favor allowing penalties for violations of an expired permit); *Pub. Interest Research Group of N.J. v. Carter-Wallace, Inc.*, 684 F. Supp. 115, 121-22 (D.N.J. 1988) ("Limitations of an expired permit, when those limitations have been transferred unchanged to the newly issued permit, may be viewed as currently in effect").

A. Discharges of Pollutants from the Facility Not in Compliance with an NPDES Permit in Violation of Section 301(a) of the Clean Water Act

The Clean Water Act requires that any person discharging pollutants to a water of the United States from a point source[10] obtain coverage under an NPDES permit. *See* 33 U.S.C. §§ 1311(a), 1342; 40 CFR § 122.26(c)(1). The Storm Water Permit is an NPDES permit which regulates storm water discharges associated with certain industrial activities. The Robertson's Owners and/or Operators discharge pollutants from point sources at the Facility to waters of the United States without NPDES permit coverage in violation of Section 301(a) of the Clean Water Act.

In California, industrial dischargers not covered under an individual NPDES permit must comply with the terms of the Storm Water Permit to lawfully discharge storm water associated with industrial activity. *See id.*; *see also* 1997 Permit, Fact Sheet p. VII; 2015 Permit, Fact Sheet,

[10] A point source is defined as any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. 33 U.S.C. § 1362(14); *see* 40 C.F.R. § 122.2

p. 9. Industrial activities conducted at the Facility fall under SIC codes 3273 and 4214, which require Robertson's obtain Storm Water Permit coverage for the entire Facility. Information available to Coastkeeper indicates that Robertson's has failed to obtain Storm Water Permit coverage for all regulated industrial operations conducted at the Facility, including material handling and storage activities.[11] Specifically, Robertson's handles and stores raw materials[12] throughout the Facility including on the 1.75 acre parcel that does not have NPDES permit coverage. The Facility Owners and/or Operators discharge storm water associated with industrial activities from that portion of the Facility without Storm Water Permit coverage in violation of the Clean Water Act.

Every day the Facility Owners and/or Operators conduct industrial activities at the Facility without NPDES permit coverage is a separate and distinct violation of the Clean Water Act and the Storm Water Permit. Robertson's has been and continues to be in daily violation of the requirement to obtain and comply with a Clean Water Act NPDES permit every day since beginning operations. These violations are ongoing, and Coastkeeper will include additional violations when additional information and data become available. The Facility Owners and/or Operators are subject to civil penalties for all violations of the Clean Water Act occurring since March 25, 2011.

B. Unauthorized Non-Storm Water Discharges from the Facility in Violation of Storm Water Permit Discharge Prohibitions

Except as authorized by Special Conditions D(1) of the 1997 Permit, Discharge Prohibition A(1) prohibits permittees from discharging materials other than storm water (non-storm water discharges) either directly or indirectly to waters of the United States. The 2015 Permit includes the same discharge prohibition. *See* 2015 Permit, Discharge Prohibition III.B. Prohibited non-storm water discharges must be either eliminated or permitted by a separate NPDES permit. *See* Storm Water Permit, Discharge Prohibition A(1); *see also* 2015 Permit, Discharge Prohibition III.B.

Information available to Coastkeeper indicates that unauthorized non-storm water discharges occur at the Facility due to inadequate BMP development and/or implementation

[11] If Robertson's claims it has Storm Water Permit coverage for all of its regulated activities at the Facility, Coastkeeper puts Robertson's on notice that it is in violation of the Storm Water Permit as set forth herein.

[12] Material handling activities include the: storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, finished product, by-product, or waste product. The term excludes areas located on plant lands separate from the plant's industrial activities, such as office buildings and accompanying parking lots as long as the drainage from the excluded areas is not mixed with storm water drained from the above described areas. *See* 2015 Permit, Attachment C, p. 7.

necessary to prevent these discharges. For example, unauthorized non-storm water discharges from the Facility during concrete and water truck filling, road watering, and/or when truck washing and cleaning activities occur. The Facility Owners and/or Operators conduct these activities without BMPs to prevent resulting non-storm water discharges. Non-storm water discharges resulting from these activities are not from sources that are listed among the authorized non-storm water discharges in the Storm Water Permit and thus are always prohibited.

Coastkeeper puts the Facility Owners and/or Operators on notice that the Storm Water Permit Discharge Prohibitions are violated each time unauthorized non-storm water is discharged from the Facility. *See* 1997 Permit, Discharge Prohibition A(1); *see also* 2015 Permit, Discharge Prohibition III.B. These discharge violations are ongoing and will continue until the Facility Owners and/or Operators develop and implement BMPs that prevent prohibited non-storm water discharges or obtain separate NPDES permit coverage. Each time the Facility Owners and/or Operators discharge prohibited non-storm water in violation of Discharge Prohibition A(1) of the 1997 Permit and Discharge Prohibition III.B. of the 2015 Permit is a separate and distinct violation of the Storm Water Permit and section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a). Coastkeeper will update the number and dates of violations when additional information becomes available. Facility Owners and/or Operators are subject to civil penalties for all violations of the Clean Water Act occurring since March 25, 2011.

C. Discharges of Polluted Storm Water from the Facility in Violation of Storm Water Permit Effluent Limitations

Effluent Limitation B(3) of the 1997 Permit requires dischargers to reduce or prevent pollutants associated with industrial activity in storm water discharges through implementation of BMPs that achieve Best Available Technology Economically Achievable ("BAT") for toxic[13] and non-conventional pollutants and Best Conventional Pollutant Control Technology ("BCT") for conventional pollutants.[14] The 2015 Permit includes the same effluent limitation. *See* 2015 Permit, Effluent Limitation V.A.

Information available to Coastkeeper, including its review of publicly available information and observations, BMPs that achieve BAT/BCT have not been implemented at the Facility. Consistent with Coastkeeper's review of available information and direct observations, the analytical results of storm water sampling at the Facility demonstrate that the Facility Owners and/or Operators have failed and continue to fail to implement BAT/BCT, as required. Specifically, Facility discharges have exceeded EPA Benchmarks for numerous pollutants. EPA Benchmarks are relevant and objective standards for evaluating whether a permittee's BMPs

[13] Toxic pollutants are listed at 40 C.F.R. § 401.15 and include copper, arsenic, lead, benzene, and zinc, among others.

[14] Conventional pollutants are listed at 40 C.F.R. § 401.16 and include biochemical oxygen demand, TSS, oil and grease, pH, and fecal coliform.

achieve compliance with BAT/BCT standards as required by Effluent Limitation B(3) of the 1997 Permit and Effluent Limitation V.A. of the 2015 Permit.[15] The table in Exhibit 1 sets forth the results of sampling at the Facility conducted by Coastkeeper as well as the Facility Owners and/or Operators. For example, a storm water sample collected by Coastkeeper on January 6, 2016, contained 5.1 mg/L of iron, 5.1 times higher than the EPA Benchmark for iron, and 4.8 mg/L of aluminum, 6.4 times higher than the EPA Benchmark for aluminum. The repeated and significant exceedances of EPA Benchmarks as set forth in Exhibit 1 demonstrates that the Facility Owners and/or Operators have failed and continue to fail to develop and/or implement BMPs at the Facility as required to achieve compliance with the BAT/BCT standards.

Coastkeeper puts the Facility Owners and/or Operators on notice that the Storm Water Permit Effluent Limitations are violated each time storm water discharges from the Facility. *See, e.g.*, Exhibit 2 (setting forth dates of rain events resulting in a discharge at the Facility).[16] These discharge violations are ongoing and will continue every time Robertson's discharges polluted storm water without developing and/or implementing BMPs that achieve compliance with the BAT/BCT standards. Coastkeeper will update the dates of violations when additional information and data become available. Each time Robertson's discharges polluted storm water in violation of Effluent Limitation B(3) of the 1997 Permit and Effluent Limitation V.A. of the 2015 Permit is a separate and distinct violation of the Storm Water Permit and Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a). The Facility Owners and/or Operators are subject to civil penalties for all violations of the Clean Water Act occurring since March 25, 2011.

Further, Coastkeeper puts the Facility Owners and/or Operators on notice that 2015 Permit Effluent Limitation V.A. is a separate, independent requirement with which Robertson's must comply, and that carrying out the iterative process triggered by exceedances of the Numeric Action Levels ("NALs") listed at Table 2 of the 2015 Permit does not amount to compliance with Effluent Limitation V.A. The NALs do not represent technology based criteria relevant to determining whether an industrial facility has implemented BMPs that achieve BAT/BCT.[17] And even if the Facility Owners and/or Operators submit any Exceedance

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[15] *See United States Environmental Protection Agency (EPA) National Pollutant Discharge Elimination System (NPDES) Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity (MSGP) Authorization to Discharge Under the National Pollutant Discharge Elimination System*, as modified effective February 26, 2009 ("Multi-Sector Permit"), Fact Sheet at 106; *see also*, 65 Federal Register 64839 (2000).

[16] Dates of significant rain events are measured at the Santa Ana Rain Station operated by Orange County Public Works. A significant rain event is defined by EPA as a rainfall event generating 0.1 inches or more of rainfall, which generally results in discharges at a typical industrial facility.

[17] "The NALs are not intended to serve as technology-based or water quality-based numeric effluent limitations. The NALs are not derived directly from either BAT/BCT requirements or receiving water objectives. NAL exceedances defined in [the 2015] Permit are not, in and of themselves, violations of [the 2015] Permit." 2015 Permit, Finding 63, p. 11. The NALs do, however, trigger reporting requirements. *See* 2015 Permit, Section XII.

Response Action Plan(s) pursuant to Section XII. of the 2015 Permit, the violations of Effluent Limitation V.A. described in this Notice Letter are ongoing.

D. Discharges of Polluted Storm Water from the Facility in Violation of Storm Water Permit Receiving Water Limitations

Receiving Water Limitation C(2) of the 1997 Permit prohibits storm water discharges and authorized non-storm water discharges that cause or contribute to an exceedance of an applicable Water Quality Standard ("WQS").[18] The 2015 Permit includes the same receiving water limitation. *See* 2015 Permit, Receiving Water Limitation VI.A. Discharges that contain pollutants in excess of an applicable WQS violate the Storm Water Permit Receiving Water Limitations. *See* 1997 Permit, Receiving Water Limitation C(2); 2015 Permit, Receiving Water Limitation VI.A.

Receiving Water Limitation C(1) of the 1997 Permit prohibits storm water discharges and authorized non-storm water discharges to surface water that adversely impact human health or the environment. The 2015 Permit includes the same receiving water limitation. *See* 2015 Permit, Receiving Water Limitation VI.B. Discharges that contain pollutants in concentrations that exceed levels known to adversely impact aquatic species and the environment constitute violations of the Storm Water Permit Receiving Water Limitations. *See* 1997 Permit, Receiving Water Limitation C(1); 2015 Permit, Receiving Water Limitation VI.B.

Storm water sampling at the Facility demonstrates that discharges contain concentrations of pollutants that cause or contribute to a violation of an applicable WQS. For example, a storm water sample collected on January 6, 2016, from OF1 had a pH of 9.53 s.u., over 10 times the Basin Plan criteria range for pH. A sample collected by Coastkeeper on January 6, 2016, from OF2 had a copper concentration of 0.16 mg/L, nearly 9.5 times the WQS for copper. These exceedances of WQS demonstrate that Robertson's has violated and continues to violate the Storm Water Permit Receiving Water Limitations. *See* 1997 Permit, Receiving Water Limitation C(2); 2015 Permit, Receiving Water Limitation VI.A.

As explained herein, the Receiving Waters are impaired, and thus unable to support the designated beneficial uses, for some of the same pollutants discharging from the Facility. The 2010 303(d) List of Impaired Water Bodies lists the Receiving Waters as impaired for multiple

[18] The Basin Plan designates Beneficial Uses for the Receiving Waters. Water quality standards are pollutant concentration levels determined by the state or federal agencies to be protective of designated Beneficial Uses. Discharges above water quality standards contribute to impairment of Receiving Waters' Beneficial Uses. Applicable water quality standards include, among others, the Criteria for Priority Toxic Pollutants in the State of California, 40 C.F.R. § 131.38 ("CTR"), and water quality objectives in the Basin Plan. Industrial storm water discharges must strictly comply with water quality standards, including those criteria listed in the applicable basin plan. *See Defenders of Wildlife v. Browner*, 191 F.3d 1159, 1166-67 (9th Cir. 1999).

pollutants, including metals and sedimentation. Information available to Coastkeeper indicates that the Facility's storm water discharges contain elevated concentrations of pollutants, such as aluminum, iron, copper, lead, and pH, which can be acutely toxic and/or have sub-lethal impacts on the avian and aquatic wildlife in the Receiving Waters. *See* Exhibit 1. Discharges of elevated concentrations of pollutants in the storm water from the Facility also adversely impact human health. These harmful discharges from the Facility are violations of the Storm Water Permit Receiving Water Limitations. *See* 1997 Permit, Receiving Water Limitation C(1); 2015 Permit, Receiving Water Limitation VI.B.

Coastkeeper puts the Facility Owners and/or Operators on notice that Storm Water Permit Receiving Water Limitations are violated each time polluted storm water discharges from the Facility. *See, e.g.*, Exhibit 2. These discharge violations are ongoing and will continue every time contaminated storm water is discharged in violation of the Storm Water Permit Receiving Water Limitations. Each time discharges of storm water from the Facility cause or contribute to a violation of an applicable WQS is a separate and distinct violation of Receiving Water Limitation C(2) of the 1997 Permit, Receiving Water Limitation VI.A. of the 2015 Permit VI.A, and Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a). Each time discharges from the Facility adversely impact human health or the environment is a separate and distinct violation of Receiving Water Limitation C(1) of the 1997 Permit, Receiving Water Limitation VI.B. of the 2015 Permit, and Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a). Coastkeeper will update the dates of violation when additional information and data becomes available. The Facility Owners and/or Operators are subject to civil penalties for all violations of the Clean Water Act occurring since March 25, 2011.

Further, Coastkeeper puts the Facility Owners and/or Operators on notice that 2015 Permit Receiving Water Limitations are separate, independent requirements with which Robertson's must comply, and that carrying out the iterative process triggered by exceedances of the NALs listed at Table 2 of the 2015 Permit does not amount to compliance with the Receiving Water Limitations. The NALs do not represent water quality based criteria relevant to determine whether an industrial facility has caused or contributed to an exceedance of a water quality standard.[19] And even if the Facility Owners and/or Operators submit any Exceedance Response Action Plan(s) pursuant to Section XII. of the 2015 Permit, the violations of the Receiving Water Limitations described in this Notice Letter are ongoing.

[19] "The NALs are not intended to serve as technology-based or water quality-based numeric effluent limitations. The NALs are not derived directly from either BAT/BCT requirements or receiving water objectives. NAL exceedances defined in [the 2015] Permit are not, in and of themselves, violations of [the 2015] Permit." 2015 Permit, Finding 63, p. 11. The NALs do, however, trigger reporting requirements. *See* 2015 Permit, Section XII.

E. Failure to Develop, Implement, and/or Revise an Adequate Storm Water Pollution Prevention Plan

The Storm Water Permit requires permittees to develop and implement Storm Water Pollution Prevention Plans prior to conducting, and in order to continue, industrial activities. The specific SWPPP requirements of the 1997 Permit and the 2015 Permit are set out below.

1. 1997 SWPPP Requirements

Section A(1) and Provision E(2) of the 1997 Permit require dischargers to have developed and implemented a SWPPP by October 1, 1992, or prior to beginning industrial activities, that meets all of the requirements of the Storm Water Permit. The objectives of the 1997 Permit SWPPP requirement are to identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm water discharges from the Facility, and to implement site-specific BMPs to reduce or prevent pollutants associated with industrial activities in storm water discharges. *See* 1997 Permit, Section A(2). These BMPs must achieve compliance with the Storm Water Permit's Effluent Limitations and Receiving Water Limitations.

To ensure compliance with the Storm Water Permit, the SWPPP must be evaluated on an annual basis pursuant to the requirements of Section A(9) of the 1997 Permit, and must be revised as necessary to ensure compliance with the Storm Water Permit. 1997 Permit, Sections A(9) and (10). Sections A(3) – A(10) of the 1997 Permit set forth the requirements for a SWPPP. Among other requirements, the SWPPP must include: a site map showing the facility boundaries, storm water drainage areas with flow patterns, nearby water bodies, the location of the storm water collection, conveyance and discharge system, structural control measures, areas of actual and potential pollutant contact, areas of industrial activity, and other features of the facility and its industrial activities (*see* 1997 Permit, Section A(4)); a list of significant materials handled and stored at the site (*see* 1997 Permit, Section A(5)); a description of potential pollutant sources, including industrial processes, material handling and storage areas, dust and particulate generating activities, significant spills and leaks, non-storm water discharges and their sources, and locations where soil erosion may occur (*see* 1997 Permit, Section A(6)).

Sections A(7) and A(8) of the 1997 Permit require an assessment of potential pollutant sources at the facility and a description of the BMPs to be implemented at the facility that will reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges, including structural BMPs where non-structural BMPs are not effective.

2. 2015 SWPPP Requirements

As with the SWPPP requirements of the 1997 Permit, Sections X(A) - (H) of the 2015 Permit require dischargers to have developed and implemented a SWPPP that meets all of the requirements of the 2015 Permit. *See also* 2015 Permit, Appendix 1. The objective of the

SWPPP requirements are still to identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm water discharges, and to implement site-specific BMPs to reduce or prevent pollutants associated with industrial activities in storm water discharges. *See* 2015 Permit, Section X(C).

The SWPPP must include, among other things and consistent with the 1997 Permit, a narrative description and summary of all industrial activity, potential sources of pollutants, and potential pollutants; a site map indicating the storm water conveyance system, associated points of discharge, direction of flow, areas of actual and potential pollutant contact, including the extent of pollution-generating activities, nearby water bodies, and pollutants control measures; a description of the BMPs developed and implemented to reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges necessary to comply with the Storm Water Permit; the identification and elimination of non-storm water discharges; the location where significant materials are being shipped, stored, received, and handled, as well as the typical quantities of such materials and the frequency with which they are handled; a description of dust and particulate-generating activities, and; the identification of individuals and their current responsibilities for developing and implementing the SWPPP. 2015 Permit, Section X(A)-(H).

Further, the 2015 Permit requires the discharger to evaluate the SWPPP on an annual basis and revise it as necessary to ensure compliance with the Storm Water Permit. 2015 Permit, Section X(A)-(B). Like the 1997 Permit, the 2015 Permit also requires that the discharger conduct an annual comprehensive site compliance evaluation that includes a review of all visual observation records, inspection reports and sampling and analysis results, a visual inspection of all potential pollutant sources for evidence of, or the potential for, pollutants entering the drainage system, a review and evaluation of all BMPs to determine whether the BMPs are adequate, properly implemented and maintained, or whether additional BMPs are needed, and a visual inspection of equipment needed to implement the SWPPP. 2015 Permit, Section X(B) and Section XV.

3. The Facility Owners and/or Operators Have Violated and Continue to Violate the Storm Water Permit SWPPP Requirements

Information available to Coastkeeper indicates that the Facility Owners and/or Operators have been and continue to conduct operations at the Facility with an inadequately developed and/or implemented SWPPP.[20] For example, in violation of Section A(4) of the 1997 Permit and Section X(E)(3) of the 2015 Permit, the site map fails to identify all areas of industrial activity, and all discharge locations.

[20] The SWPPP for the Facility available via the SMARTs database is labeled April 2015.

Further, the narrative portions of the SWPPP fail to include all sources of unauthorized non-storm water discharges in violation of Section A(6) of the 1997 Permit and Section X(G)(1)(e) of the 2015 Permit. The SWPPP also fails to include an adequate assessment of potential pollutant sources or BMPs that achieve the BAT/BCT standards, as required by Section A(6) of the 1997 Permit and Sections X(G) and X(H) of the 2015 Permit.

The Facility Owners and/or Operators also fail to address all areas of industrial activity and/or all areas of pollutant sources and corresponding pollutants by claiming in the SWPPP that industrial activities do no occur on 1.75 acres of the Facility. To the extent there are areas of the Facility where industrial activities, in fact, do not occur, the Facility Owners and/or Operators have failed to comply with the certification requirements set out at Section XVII(E)(1) of the 2015 Permit that would allow Robertson's to exclude certain areas from its storm water management program. Nor have the Facility Owners and/or Operators revised the Facility SWPPP, as required by Section A(7) of the 1997 Permit and Section X(D)(2)(a) of the 2015 Permit.

The Facility Owners and/or Operators have failed and continue to fail to adequately develop, implement, and/or revise the SWPPP, in violation of SWPPP requirements of the Storm Water Permit. Every day the Facility operates with an inadequately developed, implemented, and/or properly revised SWPPP is a separate and distinct violation of the Storm Water Permit and the Clean Water Act. The Facility Owners and/or Operators have been in daily and continuous violation of the Storm Water Permit's SWPPP requirements since at least March 25, 2011. These violations are ongoing, and Coastkeeper will include additional violations when information becomes available. The Facility Owners and/or Operators are subject to civil penalties for all violations of the Clean Water Act occurring since March 25, 2011.

F. Failure to Develop, Implement, and/or Revise an Adequate Monitoring and Reporting Program

The Storm Water Permit requires permittees to develop and implement storm water monitoring and reporting programs ("M&RPs") prior to conducting, and in order to continue, industrial activities. The specific M&RP requirements of the 1997 Permit and the 2015 Permit are set out below.

1. 1997 Permit Requirements

Section B(1) and Provision E(3) of the 1997 Permit require facility operators to develop and implement an adequate M&RP by October 1, 1992, or prior to the commencement of industrial activities at a facility, that meets all of the requirements of the Storm Water Permit. The primary objective of the M&RP is to detect and measure the concentrations of pollutants in a facility's discharge to ensure compliance with the Storm Water Permit's Discharge Prohibitions, Effluent Limitations, and Receiving Water Limitations. *See* 1997 Permit, Section B(2).

The M&RP must therefore ensure that BMPs are effectively reducing and/or eliminating pollutants at the facility, and must be evaluated and revised whenever appropriate to ensure compliance with the Storm Water Permit. *Id.* Sections B(3) – B(16) of the 1997 Permit set forth the M&RP requirements. Specifically, Section B(3) requires dischargers to conduct quarterly visual observations of all drainage areas within their facility for the presence of authorized and unauthorized non-storm water discharges. Section B(4) requires dischargers to conduct visual observations of storm water discharges from one storm event per month during the Wet Season. Sections B(3) and B(4) further require dischargers to document the presence of any floating or suspended material, oil and grease, discolorations, turbidity, odor, and the source of any pollutants. Dischargers must maintain records of observations, observation dates, locations observed, and responses taken to eliminate unauthorized non-storm water discharges and to reduce or prevent pollutants from contacting non-storm water and storm water discharges. *See* 1997 Permit, Sections B(3) and B(4). Dischargers must revise the SWPPP in response to these observations to ensure that BMPs are effectively reducing and/or eliminating pollutants at the facility. *Id.*, Section B(4). Sections B(5) and B(7) of the 1997 Permit require dischargers to visually observe and collect samples of storm water from all locations where storm water is discharged.

The Facility was and/or is a member of the Building Materials Industry Group Monitoring Program, and thus the Facility Owners and/or Operators must comply with the group monitoring provisions set forth in Section B(15) of the 1997 Permit. Under Section B(15) of the 1997 Permit, the Facility Owners and/or Operators must collect at least two (2) samples from each discharge point at the Facility over a five (5) year period. *See* 1997 Permit, Sections B(5), B(7), and B(15). Storm water samples must be analyzed for TSS, pH, specific conductance ("SC"), total organic carbon or O&G, and other pollutants that are likely to be present in the facility's discharges in significant quantities, such as aluminum and nitrate plus nitrite. *See* Storm Water Permit, Section B(5)(c). The 1997 Permit requires facilities classified as SIC code 3273, such as the Facility, to also analyze storm water samples for iron. *Id.*; *see also* 1997 Permit, Table D, Sector E.

Section B(7)(d) of the 1997 Permit allows for the reduction of sampling locations in very limited circumstances when "industrial activities and BMPs within two or more drainage areas are substantially identical." If a discharger seeks to reduce sampling locations, the "[f]acility operators must document such a determination in the annual report." *Id.*

2. 2015 Permit Requirements

As with the 1997 M&RP requirements, Sections X(I) and XI(A)-XI(D) of the 2015 Permit require facility operators to develop and implement an adequate M&RP that meets all of the requirements of the 2015 Permit. The objective of the M&RP is still to detect and measure the concentrations of pollutants in a facility's discharge, and to ensure compliance with the 2015 Permit's Discharge Prohibitions, Effluent Limitations, and Receiving Water Limitations. *See* 2015 Permit, Section XI. An adequate M&RP ensures that BMPs are effectively reducing and/or

eliminating pollutants at the facility, and is evaluated and revised whenever appropriate to ensure compliance with the Storm Water Permit. *See id.*

As an *increase* in observation frequency to the 1997 Permit, Section XI(A) of the 2015 Permit requires all visual observations at least once each month, and at the same time sampling occurs at a discharge location. Observations must document the presence of any floating and suspended material, O&G, discolorations, turbidity, odor and the source of any pollutants. 2015 Permit, Section XI(A)(2). Dischargers must document and maintain records of observations, observation dates, locations observed, and responses taken to reduce or prevent pollutants in storm water discharges. 2015 Permit, Section XI(A)(3).

Section XI(B)(1-5) of the 2015 Permit requires permittees to collect storm water discharge samples from a qualifying storm event[21] as follows: 1) from each discharge location, 2) from two storm events within the first half of each reporting year[22] (July 1 to December 31), 3) from two storm events within the second half of each reporting year (January 1 to June 30), and 4) within four hours of the start of a discharge, or the start of facility operations if the qualifying storm event occurs within the previous 12-hour period. Section XI(B)(11) of the 2015 Permit, among other requirements, provides that permittees must submit all sampling and analytical results for all samples via SMARTS within 30 days of obtaining all results for each sampling event.

The parameters to be analyzed are also consistent with the 1997 Permit, except the 2015 Permit no longer requires SC be sampled. Specifically, Section XI(B)(6)(a)-(b) of the 2015 Permit requires permittees to analyze samples for TSS, oil & grease, and pH. Section XI(B)(6)(c) of the 2015 Permit requires permittees to analyze samples for pollutants associated with industrial operations. Section XI(B)(6) of the 2015 Permit also requires dischargers to analyze storm water samples for additional applicable industrial parameters related to receiving waters with 303(d) listed impairments, or approved Total Maximum Daily Loads.

3. The Facility Owners and/or Operators Have Violated and Continue to Violate the Storm Water Permit M&RP Requirements

The Facility Owners and/or Operators have been and continue to conduct operations at the Facility with an inadequately developed, implemented, and/or revised M&RP. For example, the Facility Owners and/or Operators have failed and continue to fail to develop an M&RP that requires the Facility Owners and/or Operators to analyze storm water discharges from the Facility for all required parameters by failing to specify that storm water discharges will be analyzed for, at a minimum, aluminum, lead, zinc, cadmium, chromium, copper, arsenic, COD,

[21] The 2015 Permit defines a qualifying storm event as one that produces a discharge for at least one drainage area, and is preceded by 48-hours with no discharge from any drainage areas. 2015 Permit, Section XI(B)(1).

[22] A reporting year is defined as July 1 through June 30. 2015 Permit, Findings, ¶ 62(b).

and BOD, in violation of Section B(5)(c) of the 1997 Permit and Section XI(B)(6)(c) of the 2015 Permit. In addition, the Facility Owners and/or Operators failed and continue to fail to develop an M&RP that requires that the applicable test methods be used when analyzing storm water samples from the Facility by not requiring the use of a calibrated pH meter to test pH levels in violation of Section XI(C)(2)(c) of the 2015 Permit.[23]

The Facility Owners and/or Operators also failed to collect and analyze storm water samples as required by the Storm Water Permit. For example, for the past five (5) years the Facility Owners and/or Operators have not collected storm water samples as was required in violation of Sections B(5), B(7), and B(15) of the 1997 Permit. Specifically, pursuant to the applicable group monitoring plan, the Facility Owners and/or Operators were required to collect samples in the 2009/2010, 2011/2012, and 2012/2013 wet seasons. While the Facility Owners and/or Operators state in the 2012/2013, 2013/2014, and 2014/2015 Annual Reports that the Facility "is a construction based business and during inclement weather our facility is closed," Coastkeeper has observed and has obtained publicly available information demonstrating that, in fact, the Facility does operate during storm events. This fact is supported by the Facility Owners and/or Operators recent collection of storm water samples from the Facility during a rain event.

In fact, Robertson's collected its first storm water sample for the Facility on September 15, 2015. However, the Facility Owners and/or Operators failed to analyze September 15 sample for all required contaminants, including pH, copper, lead, and aluminum, in violation of Section XI(B)(6) of the 2015 Permit. *See* Exhibit 1.

Further, at Sections 10.4.7 and 10.4.8 the Facility SWPPP states that the Facility Owners and/or Operators will both combine storm water samples and reduce the number of locations to be sampled in each drainage area if the industrial activities and BMPs in the area are similar. Not only have the Facility Owners and/or Operators failed and continue to fail to meet the requirements of Sections XI(C)(4) and XI(C)(5) related to representative sampling reduction and qualified combined samples, application of these concepts directly contradicts the Facility Owners' and/or Operators' assertion that there is only one (1) sample location at the Facility because storm water from OF2 is not associated with industrial activities. Either storm water discharging from OF2 is associated with industrial activities and the Facility Owners and/or Operators have failed and continue to fail to sample those discharges in violation of Section B(5) of the 1997 Permit and Section XI(B)(1) of the 2015 Permit, or the Facility Owners and/or Operators have failed and continue to fail to demonstrate that storm water samples from OF1 are representative of storm water discharges from OF2 in violation of Section B(7)(d) of the 1997 Permit and Section XI(C)(4) of the 2015 Permit.

[23] Information available to Coastkeeper, including storm water samples collected by Coastkeeper, indicates that the Facility is in, or will likely be in, Level 1 status based on pH levels in storm water discharges from the Facility.

The Facility Owners' and/or Operators' failure to conduct sampling and monitoring as required by the Storm Water Permit demonstrates that it has failed to develop, implement, and/or revise an M&RP that complies with the requirements of the Storm Water Permit. Every day that the Facility Owners and/or Operators conduct operations in violation of the specific monitoring requirements of the Storm Water Permit, or with an inadequately developed and/or implemented M&RP, is a separate and distinct violation of the Storm Water Permit and the Clean Water Act. The Facility Owners and/or Operators have been in daily and continuous violation of the Storm Water Permit's M&RP requirements every day since at least March 25, 2011. These violations are ongoing, and Coastkeeper will include additional violations when information becomes available. The Facility Owners and/or Operators are subject to civil penalties for all violations of the Clean Water Act occurring since March 25, 2011.

G. Failure to Comply with the Storm Water Permit's Reporting Requirements

Section B(14) of the 1997 Permit requires a permittee to submit an Annual Report to the Regional Board by July 1 of each year. Section B(14) requires that the Annual Report include a summary of visual observations and sampling results, an evaluation of the visual observation and sampling results, the laboratory reports of sample analysis, the annual comprehensive site compliance evaluation report, an explanation of why a permittee did not implement any activities required, and other information specified in Section B(13). The 2015 Permit includes the same annual reporting requirement. *See* 2015 Permit, Section XVI.

The Facility Owners and/or Operators have failed and continue to fail to submit Annual Reports that comply with these reporting requirements. For example, in each Annual Report since the filing of the 2011/2012 Annual Report, the Facility Owners and/or Operators certified that: (1) a complete Annual Comprehensive Site Compliance Evaluation was done pursuant to Section A(9) of the Storm Water Permit; (2) the SWPPP's BMPs address existing potential pollutant sources; and (3) the SWPPP complies with the Storm Water Permit, or will otherwise be revised to achieve compliance. However, information available to Coastkeeper indicates that these certifications are erroneous. For example, as discussed above, storm water samples collected from the Facility contain concentrations of pollutants above Benchmark Levels, thus demonstrating that the SWPPP's BMPs do not adequately address existing potential pollutant sources. Further, the Facility's SWPPP does not include many elements required by the Storm Water Permit, and thus it is erroneous to certify that the SWPPP complies with the Storm Water Permit.

The Facility Owners and/or Operators have also submitted incomplete Annual Reports. For instance, in the 2012/2013, 2013/2014, 2014/2015 Annual Reports, the Facility Owners and/or Operators failed to include required explanations for its failures to conduct certain required sampling and/or observations. In the 2012/2013, 2013/2014, 2014/2015 Annual Reports, as the reason no samples were collected the Facility Owners and/or Operators state that the Facility "is a construction based business and during inclement weather our facility is closed." Not only does information available to Coastkeeper demonstrate that the Facility does

operate during storm events, the 1997 Permit and the 2015 Permit do not excuse failures to collect required samples on this basis.

In addition, the facility operator must report any noncompliance with the Storm Water Permit at the time that the Annual Report is submitted, including 1) a description of the noncompliance and its cause, 2) the period of noncompliance, 3) if the noncompliance has not been corrected, the anticipated time it is expected to continue, and 4) steps taken or planned to reduce and prevent recurrence of the noncompliance. Storm Water Permit, Section C(11)(d). The Owners and/or Operators have not reported non-compliance as required.

Information available to Coastkeeper indicates that the Facility Owners and/or Operators have submitted incomplete and/or incorrect Annual Reports that fail to comply with the Storm Water Permit. As such, the Facility Owners and/or Operators are in daily violation of the Storm Water Permit. Every day the Facility Owners and/or Operators conduct operations at the Facility without reporting as required by the Storm Water Permit is a separate and distinct violation of the Storm Water Permit and Section 301(a) of the Clean Water Act, 33 U.S.C. §1311(a). The Facility Owners and/or Operators have been in daily and continuous violation of the Storm Water Permit's reporting requirements every day since at least March 25, 2011. These violations are ongoing, the 2015 Permit's annual reporting requirements are as stringent as the 1997 Permit requirements, and Coastkeeper will include additional violations when information becomes available, including specifically violations of the 2015 Permit reporting requirements (*see* 2015 Permit, Sections XII. and XVI.). The Facility Owners and/or Operators are subject to civil penalties for all violations of the Clean Water Act occurring since March 25, 2011.

IV. RELIEF SOUGHT FOR VIOLATIONS OF THE CLEAN WATER ACT

Pursuant to Section 309(d) of the Clean Water Act, 33 U.S.C. § 1319(d), and the Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. § 19.4, each separate violation of the Clean Water Act subjects the violator to a penalty for all violations occurring during the period commencing five years prior to the date of the Notice Letter. These provisions of law authorize civil penalties of up to $37,500.00 per day per violation for all Clean Water Act violations after January 12, 2009.

In addition to civil penalties, Coastkeeper will seek injunctive relief preventing further violations of the Clean Water Act pursuant to Sections 505(a) and (d), 33 U.S.C. § 1365(a) and (d), declaratory relief, and such other relief as permitted by law.

Lastly, pursuant to Section 505(d) of the Clean Water Act, 33 U.S.C. § 1365(d), Coastkeeper will seek to recover its costs, including attorneys' and experts' fees, associated with this enforcement action.

V. CONCLUSION

Coastkeeper is willing to discuss effective remedies for the violations described in this Notice Letter. However, upon expiration of the 60-day notice period, Coastkeeper will file a citizen suit under Section 505(a) of the Clean Water Act for Robertson's violations of the Storm Water Permit.

If you wish to pursue settlement discussions please contact Coastkeeper's legal counsel:

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Sincerely,

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Robertson's Santa Ana
Exhibit 1

Sample collected by Waterkeeper (W) or Discharger (D)	Date of sample collection	Sample Location	Parameter	Result	Units	Benchmark	Magnitude of Benchmark Exceedance	California Toxics Rule Criteria/WQO	Magnitude of CTR/WQO Exceedance
2011-2012 WET SEASON									
no samples collected									
2012-2013 WET SEASON									
no samples collected									
2013-2014 WET SEASON									
no samples collected									
2014-2015 WET SEASON									
no samples collected									
2015-2016 Reporting Year									
D	9/15/2015	Outfall 1	Iron	1.02	mg/L	1	1.02	none	n/a
D	9/15/2015	Outfall 1	pH	n/a	s.u.	6.0-9.0	n/a	6.5-8.5	n/a
D	9/15/2015	Outfall 1	Total Suspended Solids	31.7	mg/L	100	0	none	0
D	9/15/2015	Outfall 1	Oil & Grease	ND	mg/L	15	n/a	none	0
W	1/6/2016	Outfall 1	Zinc	0.021	mg/L	0.13	0	0.14	0
W	1/6/2016	Outfall 1	N+N	0.59	mg/L	0.68	0	none	0
W	1/6/2016	Outfall 1	Iron	5.1	mg/L	1	5.1	none	0
W	1/6/2016	Outfall 1	Aluminum	4.8	mg/L	0.75	6.4	none	0
W	1/6/2016	Outfall 1	pH	9.53	s.u.	6.0-9.0	.53 above range	6.5-8.5	1.03 above range
W	1/6/2016	Outfall 1	Specific Conductance	180	µmhos/cm	200	0	none	0
W	1/6/2016	Outfall 1	Total Suspended	110	mg/L	100	1.1	none	0

Robertson's Santa Ana
Exhibit 1

Sample collected by Waterkeeper (W) or Discharger (D)	Date of sample collection	Sample Location	Parameter	Result	Units	Benchmark	Magnitude of Benchmark Exceedance	California Toxics Rule Criteria/WQO	Magnitude of CTR/WQO Exceedance
			Solids						
W	1/6/2016	Outfall 1	Oil & Grease	ND	mg/L	15	n/a	none	n/a
W	1/6/2016	Outfall 1	Total Organic Carbon	0.0079	mg/L	110	0	none	0
W	1/6/2016	Outfall 2	Zinc	ND	mg/L	0.13	n/a	0.14	n/a
W	1/6/2016	Outfall 2	N+N	2.8	mg/L	0.68	4.117647059	none	0
W	1/6/2016	Outfall 2	Iron	42	mg/L	1	42	none	0
W	1/6/2016	Outfall 2	Aluminum	26	mg/L	0.75	34.66666667	none	0
W	1/6/2016	Outfall 2	pH	10.6	s.u.	6.0-9.0	1.6 above range	6.5-8.5	2.1 above range
W	1/6/2016	Outfall 2	Specific Conductance	640	umhos/cm	200	3.2	none	0
W	1/6/2016	Outfall 2	Total Suspended Solids	950	mg/L	100	9.5	none	0
W	1/6/2016	Outfall 2	Oil & Grease	0	mg/L	15	0	none	0
W	1/6/2016	Outfall 2	Total Organic Carbon	10	mg/L	110	0	none	0
W	1/6/2016	Outfall 2	Arsenic	0.37	mg/L	0.15	2.466666667	0.34	1.088235294
W	1/6/2016	Outfall 2	Lead	0.11	mg/L	0.095	1.157894737	0.1	1.1
W	1/6/2016	Outfall 2	Copper	0.16	mg/L	0.0156	10.25641026	0.017	9.411764706
						Total Exceedances	**14**		**6**

Robertson's Santa Ana
Exhibit 2

Santa Ana Rain Station (OC Public Works), Latitude: 33.74763 Longitude: -117.876686		
Date	**Day of Week**	**Daily Precip (Inches)**
1/3/2011	Monday	0.83
1/4/2011	Tuesday	0.12
1/31/2011	Monday	0.17
2/16/2011	Wednesday	0.25
2/19/2011	Saturday	0.35
2/20/2011	Sunday	0.51
2/26/2011	Saturday	1.04
3/7/2011	Monday	0.23
3/21/2011	Monday	1.01
3/22/2011	Tuesday	0.21
3/24/2011	Thursday	0.71
3/25/2011	Friday	0.29
5/16/2011	Monday	0.13
5/18/2011	Wednesday	0.3
10/6/2011	Thursday	0.9
11/5/2011	Saturday	0.11
11/7/2011	Monday	0.17
11/12/2011	Saturday	0.11
11/13/2011	Sunday	0.1
11/21/2011	Monday	0.81
12/12/2011	Monday	0.13
12/13/2011	Tuesday	0.41
1/21/2012	Saturday	0.64
1/22/2012	Sunday	0.21
1/24/2012	Tuesday	0.51
2/16/2012	Thursday	0.45
2/28/2012	Tuesday	0.14
3/18/2012	Sunday	1.05
3/26/2012	Monday	0.67
4/11/2012	Wednesday	0.39
4/14/2012	Saturday	0.7
4/26/2012	Thursday	0.26
7/13/2012	Friday	0.18
10/11/2012	Thursday	0.18

Robertson's Santa Ana
Exhibit 2

10/12/2012	Friday	0.17
11/17/2012	Saturday	0.24
11/29/2012	Thursday	0.21
11/30/2012	Friday	0.1
12/3/2012	Monday	0.6
12/13/2012	Thursday	0.54
12/24/2012	Monday	0.55
12/26/2012	Wednesday	0.26
12/30/2012	Sunday	0.13
1/24/2013	Thursday	0.56
1/25/2013	Friday	0.3
1/26/2013	Saturday	0.22
2/9/2013	Saturday	0.18
2/20/2013	Wednesday	0.18
3/9/2013	Saturday	0.27
3/10/2013	Sunday	0.12
5/7/2013	Tuesday	0.35
5/8/2013	Wednesday	0.19
10/10/2013	Thursday	0.24
11/21/2013	Thursday	0.32
11/30/2013	Saturday	0.22
12/8/2013	Sunday	0.27
12/20/2013	Friday	0.16
2/3/2014	Monday	0.12
2/7/2014	Friday	0.11
2/27/2014	Thursday	0.44
2/28/2014	Friday	0.5
3/2/2014	Sunday	1.07
3/3/2014	Monday	0.33
4/3/2014	Thursday	0.12
4/27/2014	Sunday	0.22
11/1/2014	Saturday	0.32
12/1/2014	Monday	0.13
12/3/2014	Wednesday	1.05
12/4/2014	Thursday	0.8
12/12/2014	Friday	1.32
12/13/2014	Saturday	0.69
12/17/2014	Wednesday	0.34
12/31/2014	Wednesday	0.12

Robertson's Santa Ana
Exhibit 2

1/11/2015	Sunday	0.3
1/12/2015	Monday	0.75
1/27/2015	Tuesday	0.12
2/23/2015	Monday	0.52
3/3/2015	Tuesday	0.19
3/4/2015	Wednesday	0.19
4/9/2015	Thursday	0.2
5/9/2015	Saturday	0.29
5/16/2015	Saturday	1.06
5/17/2015	Sunday	0.16
7/19/2015	Sunday	0.19
7/20/2015	Mon	0.28
9/10/2015	Thursday	0.16
9/15/2015	Tuesday	1.22
12/14/2015	Monday	0.26
12/20/2015	Sunday	0.15
12/22/2015	Tuesday	0.25
12/23/2015	Wednesday	0.25
1/6/2016	Wednesday	0.95
1/7/2016	Thursday	1.52
2/1/2016	Monday	0.24
	Total Rain Days	**94**